

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF SOUTH CAROLINA

ENTERED  
APR 30 2003  
K.E.P.

In re:

CTP Partners, LLC,

FILED

APR 30 2003

DeBRENDA K. ARGOE, CLERK  
United States Bankruptcy Court  
Columbia, South Carolina (11)

Case No. 03-02516-W

Chapter 11

**ORDER AUTHORIZING DEBTOR'S EMPLOYMENT OF  
NEXSEN PRUET JACOBS & POLLARD, LLC PURSUANT TO 11 U.S.C. § 327(a)**

THIS MATTER CAME BEFORE THE COURT for hearing on April 3, 2003, on the Application of CTP Partners, LLC ("CTP") wherein CTP seeks the Court's authorization to employ Nexsen Pruet Jacobs & Pollard, LLC ("NPJP") as its bankruptcy counsel, pursuant to 11 U.S.C. § 327(a).<sup>1</sup> The United States Trustee ("UST") objects to the Application and argues that NPJP must be deemed an insider and that NPJP is therefore disqualified from representing CTP, pursuant to § 327(a). After reviewing the pleadings in this matter and hearing the arguments of counsel, the Court makes the following Findings of Fact and Conclusions of Law pursuant to Federal Rule of Civil Procedure 52, applicable in bankruptcy proceedings by Federal Rule of Bankruptcy Procedure 7052.<sup>2</sup>

**FINDINGS OF FACT**

1. CTP filed a voluntary petition seeking Chapter 11 relief on February 28, 2003. Since that time, CTP has continued to operate its business and manage its property as debtor-in-possession pursuant to §§1107(a) and 1108.

<sup>1</sup> Further references to the Bankruptcy Code shall be by section number only.

<sup>2</sup> The Court notes that to the extent any of the following Findings of Fact constitute Conclusions of Law, they are adopted as such and to the extent any Conclusions of Law constitute Findings of Fact, they are so adopted.

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2. CTP seeks to employ NPJP to represent it in its Chapter 11 bankruptcy case. NPJP's bankruptcy attorneys have special expertise in such matters and frequently appear before this Court in matters of this kind. Specifically, the services to be performed by NPJP's bankruptcy attorneys include, but are not limited to, providing legal advice with respect to CTP's powers and duties as debtor-in-possession; preparing applications, motions, pleadings, objections, memoranda, briefs, orders, reports and other legal papers that may be necessary; providing legal advice and assistance in the development of a plan of reorganization, a disclosure statement and other documents relating to the disposition of assets; and providing legal advice on various other matters.

3. CTP and NPJP have agreed that NPJP will be employed on a general retainer and that NPJP's attorneys will bill at their customary rates for their services subject to the Court's approval.

4. In the Application and in NPJP's Rule 2014 Statement, CTP and NPJP disclose that NPJP has connections with CTP in that a member of NPJP, April C. Lucas ("A. Lucas") is related to David H. Lucas ("D. Lucas") and Stephen D. Lucas ("S. Lucas"), two officers and interest holders (directly or indirectly) of CTP. NPJP states that A. Lucas practices in the area of bond law, public finance law, and commercial development and that her practice area does not include bankruptcy law.

5. The UST objected to NPJP's employment based on its belief that A. Lucas' degree of relation renders her an "insider" under §101(31) and that she would not be a "disinterested person", thereby disqualifying her from employment under §327(a). The UST asserts that the disqualification of A. Lucas is imputed to the entire NPJP law firm.

#### **CONCLUSIONS OF LAW**

1. CTP seeks to employ NPJP as bankruptcy counsel pursuant to § 327(a). The UST objected to the employment of NPJP as bankruptcy counsel on the ground that NPJP is not disinterested as required in § 327(a). Section 327(a) provides as follows:

Except as otherwise provided in this section, the trustee, with the court's approval, may employ one or more attorneys, accountants, appraisers, auctioneers, or other professional persons, that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the trustee in carrying out the trustee's duties under this title.

2. Section 327(a) sets forth a two-part test to determine whether an attorney may represent or assist the trustee in carrying out duties required by the Bankruptcy Code (§327(a) is applicable based on §1107, whereby a debtor-in-possession has the same rights and duties of a trustee). The first prong of the test states that an attorney must not hold or represent an interest adverse to the estate. The second prong of the test states that an attorney must be a disinterested person or party.

3. The UST did not object to the approval of NPJP's employment on the ground that it holds or represents an interest adverse to CTP. CTP asserts in its Application that, upon information and belief, NPJP does not hold an interest adverse to CTP. There is no allegation of a conflict of interest. As such, NPJP meets the first prong of the test.

4. Therefore, the issue to be determined is whether NPJP meets the second prong of the test. The UST claims that NPJP is not a disinterested party based on A. Lucas' relation to D. Lucas and S. Lucas. NPJP recognizes that A. Lucas is not a disinterested party, and, therefore, could not represent CTP in its bankruptcy. However, A. Lucas' practice is in the specialized area of bond law and public financing, not bankruptcy law. NPJP represents that A. Lucas will not be involved in any way in NPJP's representation of CTP in its bankruptcy case.

5. The underlying issue in this objection is whether a disinterested person's disqualification is imputed to the entire law firm. While this is a case of first impression in this circuit, there are cases on point to this matter in other circuits.

6. In the case of In re Creative Restaurant Management, Inc., 139 B.R. 902 (Bankr. W.D.Mo. 1992), the Court held that a law firm was not automatically disqualified from representing a chapter 11 debtor solely because one of its attorneys was ineligible for employment by the debtor. The Court reviewed the Bankruptcy Code, the applicable rules, and the Rules of Professional Conduct of Missouri, in making its determination. The Court noted that, “. . . the Bankruptcy Code contains no requirement that an entire law firm is *per se* ineligible for employment due to one of its members having previously served as an officer of the debtor.” 139 B.R. at 913. The Court applied a two-part test to determine whether the law firm was disqualified as an insider by virtue of the ineligibility of one of its attorneys. The test is as follows: (1) the law firm must determine whether it has a conflict of interest under applicable ethical rules governing the conduct of attorneys; and (2) the Court must then determine whether the Bankruptcy Code makes the law firm ineligible due to its prior relationship to the debtor. In Creative Restaurant Management, the Court concluded that the law firm could serve as counsel for the debtor-in-possession.

7. In the case of United States Trustee v. S.S. Retail Stores Corporation (In re S.S. Retail Stores Corporation), 211 B.R. 699 (9<sup>th</sup> Cir. Bap. 1997), the Court held that even if a partner in the law firm were not a disinterested party, his disqualification would not be imputed to the law firm. The Court applied the two-step analysis used in the Creative Restaurant Management decision. In In re S.S. Retail Stores Corporation, the Court stated that, “The Code does not provide for disqualification of an entire law firm based on the non-disinterestedness of

one of its attorneys.” 211 B.R. 703. See also United States Trustee v. Keravision, Inc. (In re Keravision, Inc.), 273 B.R. 614, 616 (N.D. Cal. 2002) (holding that §327(a) and §101(14)(D) do not provide for vicarious disqualification of a law firm where a single partner of the law firm is disqualified because he or she was an officer of the debtor corporation); Vergos v. Timber Creek, Inc., 200 B.R. 624, 628 (W.D. Tenn. 1996) (“The court therefore concludes that nothing in section 327 requires the imputation of an individual’s disqualification to that person’s law firm.”).

8. This Court hereby finds in this case that disqualification, due to an insider status based on a familial relationship, should not be imputed to the entire law firm. This Court also finds that decisions such as this should be made on a case-by-case analysis.

9. To promote creditors’ confidence, the Court orders NPJP to implement and enforce screening procedures that exclude A. Lucas from participating in any way in NPJP’s representation of Debtor.

10. Based upon the foregoing, this Court finds that the Application to employ NPJP as bankruptcy counsel to CTP, pursuant to §327(a), should be granted, and based upon the reasons set forth above, the Court finds that NPJP’s employment satisfies §327(a).

It is therefore,

ORDERED, ADJUDGED, AND DECREED that CTP’s Application to employ NPJP as its bankruptcy counsel is hereby granted.

AND IT IS SO ORDERED.

  
UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina  
April 30, 2003